

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**ECONOMIC CASE APPEAL NO. 08 OF 2021**

*(Arising from Economic Case No. 25/2019 of the District Court of Biharamulo)*

**HAMAD FELICIAN.....APPELLANT**

***VERSUS***

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*05<sup>th</sup> July & 12<sup>th</sup> August 2022*

***Kilekamajenga, J.***

The charge against the appellant contained four counts. It is alleged that, the appellant was spotted selling government trophies at the main Market at Biharamulo. A secret informer notified Burigi National Park rangers who finally effected an arrest. When the appellant's bag was searched, he was found in possession of the following items: one teeth of an hippopotamus, five bottles of lion oil, scales of a pangolin, and a piece of a hyena skin. The certificate of seizure was filled-in and signed by the appellant and other two witnesses. The appellant was arrested and finally charged in court for two counts. First, unlawful possession of government trophy contrary to **section 86 (1) and (2)(b) of the Wildlife Conservation Act, Act No. 5 of 2009**, read together with **paragraph 14 of the 1<sup>st</sup> schedule to the same Act** and **section 57 (1) and 60(2) of the Economic and Organised Crimes Control Act, Cap. 200 RE 2002**. Second, unlawful possession government trophy contrary to **section**



**86(1) and (2)(c)(iii) of the Wildlife Conservation Act, Act No. 5 of 2009,** read together with **paragraph 14 of the 1<sup>st</sup> schedule to the Act and section 57(1) and 60(2) of the Economic and Organised Crimes Control Act, Cap. 200 RE 2002.** It is further alleged that, the offences were committed on 20<sup>th</sup> October 2019 at Kasusura Market within Biharamulo District in Kagera region.

During the trial, the appellant entered plea of not guilty to the two counts allowing the prosecution to prove the case at the standard of beyond reasonable doubt. This being the first appellate court, the evaluation of the evidence adduced during the trial may be pertinent. The first prosecution witness (PW1) testified that, on 20<sup>th</sup> October 2019, while at Bomani street, he witnessed a man holding a bag. He was arrested by National Park rangers and his bag was searched. He witnessed the bag containing six scales of pangolin, one piece of Hippopotamus, five bottles of lion oil and one piece of spotted hyena's skin. PW2 alleged to have received information from a secret informer about the presence of the appellant who possessed government trophies at Kasusura Market. He went to the market and arrested the appellant. The search of the appellant revealed the presence of one teeth of hippopotamus, five bottles of lion oil, six pieces of pangolin scale and one piece of hyena skin. He filled-in a certificate of seizure which was admitted in court as exhibit P1. PW3 phoned the valuer who identified the exhibits and filled-in the valuation certificate. PW4 is the person who identified the government trophies and prepared the valuation report.

In his defence, the appellant simply denied to commit the alleged offences and urged the court to acquit him alleging that the prosecution witnesses adduced false evidence.

The trial court finally convicted and sentenced the appellant to serve twenty years in prison for each count and the sentence ran concurrently. The appellant appealed to this court armed with five grounds thus:

- 1. That, the trial court erred both in fact and in law to hold that the prosecution proved the case against the appellant beyond reasonable doubt whereas not.*
- 2. That, the trial court misdirected itself by dealing with the prosecution evidence on its own that it was true and reliable thereby arriving at the conclusion without proper consideration of the defence evidence thereby failing to consider the whole adduced evidence by both sides, the prosecution and defence.*
- 3. That, the trial court misdirected itself to convict the appellant relying on the contradictory evidence of PW1 and PW2 regarding the alleged scene of the crime being two different locations which evidence raises a reasonable doubt.*
- 4. That the trial court erred both in law and in fact to hold that the chain of custody of exhibit was legally complied with whereas not.*
- 5. That, the trial court erred both in law and in fact to admit and rely on Exhibit P1 (Certificate of Seizure) that was obtained through a search that was not properly conducted and failed to involve any immediate local leader in the vicinity of the alleged scene of the crime to dispel any possibility of planting the tendered exhibits.*

Before this court, the appellant who was unrepresented urged the court to consider the grounds of appeal as he does not know to read and write. He further insisted that, he was arrested at Biharamulo Market and taken to the police station and later charged with the offence of being found in possession of government trophies.

On his side, the learned State Attorney supported the appeal on the mere reason that the trial magistrate failed to endorse whether the consent and certificate was received to give jurisdiction to try the case. The counsel referred the court to the case of **Ramadhani Omary Mtiula v. Republic, Criminal Appeal No. 62 of 2019**, CAT at Iringa (unreported). He further hinted that, the 2<sup>nd</sup> count has several offences which ought not to be lumped in one count. He finally urged the court to order re-trial of the case.

In this case, despite the irregularity pointed out by the learned State Attorney, the other point for consideration is whether the prosecution proved its case beyond reasonable doubt that the appellant was found in possession of the alleged government trophies. As already stated above, it is alleged that, the appellant was found in possession of five bottles of lion oil, a teeth of hippopotamus, five pieces of pangolin scale and one piece of a hyena skin. However, throughout the prosecution evidence, there is no further evidence to prove whether the alleged properties were actually government trophies. For

instance, the prosecution evidence did not go further analysing whether the five bottles contained lion oil and not any other concoction. There was no expert's evidence to support whether the alleged bone was actually an hippopotamus teeth.

This being a criminal case, in my view, it needed an expert's opinion to know whether such oil comes from a lion's fat and not otherwise. Even the allegation that the scales belonged to a pangolin was an issue to require an expert for verification. Furthermore, the prosecution assumed that every person knew hippopotamus teeth and therefore did not bother to prove further. A hyena's skin may be assumed because it is rare to find cattle with such a dotted skin but the rest of the government trophies tendered in this case required expert's verification before finding the appellant guilty of the alleged offences. The essence of an expert's evidence is to verify and clear doubts on matters which any lay person in that field may not be able to prove. The rationale of requiring expert's opinions derives from **section 47 of the Evidence Act, Cap. 6 RE 2019** which provides that:

*'47. When a court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger or other impressions, the opinion, upon that point of persons (generally called experts) possessing special knowledge, skill, experience or training in such foreign law, science or art or question as to identity of handwriting or finger or other impressions are relevant facts.'*


Also, in the case of **Bashiru Rashid Omar v. Director of Public Prosecutions**, Criminal Appeal No. 309 of 2017, CAT at Zanzibar, the Court of Appeal of Tanzania stated the rationale of inviting expert's opinion thus:

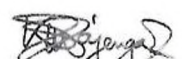
*'Indeed, opinion of the expert evidence is premised on a general rule that there are certain matters which cannot be perceived by the senses. Their existence or non-existence is ascertained by inferences drawn by persons specifically trained in the particular field which the subject is connected.'*

In this case, in absence of the expert's opinion to verify on whether the items found in the appellant's bag were all government trophies, the prosecution's evidence was weak to support a conviction. In my view, it was not certain whether the prosecution proved its case beyond reasonable doubt that such items were real government trophies. I find this to be the major doubt worthy benefiting the appellant's case. I hereby allow the appeal and order the release of the appellant unless held for other lawful reasons.

Dated at Bukoba this 12<sup>th</sup> Day of August 2022.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**12/08/2022**



**Court:**

Judgment delivered this 12<sup>th</sup> August 2022 in the presence of the learned State Attorney, Mr. Amani Kirua and the appellant present in person. Right of appeal explained.



**Ntemi N. Kilekamajenga.**

**JUDGE**

**12/08/2022**